IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an appeal in terms of section 331 (3) of the Code of Criminal Procedure Act.15 of 1979

Democratic Socialist Republic of Sri Lanka.

Complainant

Vs

Jayasooriya Arachchige Prasanna Kumara

Accused

Court of Appeal Case No:
CA/HCC/0138/19

High Court of Colombo Case No:
HC-372/17

AND NOW BETWEEN

Jayasooriya Arachchige Prasanna Kumara

Accused-Appellant

Vs

The Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondent

Before : **P Kumararatnam, J.**

Pradeep Hettiarachchi, J.

Counsel : Ramalingam Ranjan for the Accused-Appellant

Anupa De Silva DSG for the Respondents

Argued on : 27.10.2025

Decided on : 12.12.2025

Pradeep Hettiarachchi, J

Judgment

1. This appeal arises from the judgment dated 18.07.2019, delivered by the learned High Court Judge of Colombo. The Appellant was indicted before the High Court of Colombo in Case No. HC 372-17 on the following counts:

    A. That on or about 16-06-2016 at Mahawaththa, within the jurisdiction of this Court the Appellant by keeping in his possession a dangerous drug set out in Column II of Part III of the Third Schedule namely Heroin in excess of the amount set out in the said Column II, .i.e. 10.28 grams committed an offence punishable under section 54 A(d) of Poisons, Opium and Dangerous Drugs Ordinance (as amended).

    B. At that time and place aforesaid and in the course of the same transaction, the Appellant, by trafficking a dangerous drug set out in Column II of Part III of the Third Schedule namely Heroin in excess of the amount set out in the said Column II, .i.e. 10.28 grams committed an offence punishable under section 54 A (b) of Poisons, Opium and Dangerous Drugs Ordinance (as amended).

2. At the trial before the High Court, seven witnesses testified for the prosecution, while the Appellant made a dock statement. At the conclusion of the trial, the learned High Court Judge found the Appellant guilty of charges 1 and 2, convicted him, and sentenced him to death. Being aggrieved by the said conviction and the sentence, the Appellant has preferred the instant appeal.

3. The grounds of appeal advanced by the Appellant are as follows;

    a. The trial Judge failed to consider the discrepancies in the evidence of PW1 and PW2

    b. The trial judge erred in applying the test of probability to the defence evidence. He evaluated the defence version by placing it in juxtaposition with the prosecution evidence and, in effect, had already predetermined that the prosecution had proved its case even before considering the defence. The trial Judge erred in applying the correct legal principles when evaluating the dock statement and shifted the burden on to the appellant to call witnesses to prove his version

Discrepancies in the evidence of PW1 and PW2:

4. The first witness called by the prosecution was PW1, IP Sampath Chamila. According to his evidence, the arrest of the Appellant was made while they were on routine duty. There were five officers in the raiding party, including PW1. The other officers were SI Dayarathne, PC 67949 Kumara, PC 68921 Priyadarshana, and PS 6131 Gamini.

5. They left the Harbour Police Station at 9.45 a.m. and proceeded towards Grandpass, reaching the Mahawatta area shortly thereafter. Around 10.05 a.m., they stopped the vehicle at a junction near Andrewge Watta. PW1 and PW2 alighted from the vehicle and proceeded towards Andrewge Watta on foot. After walking approximately 100 metres inside, they observed a person wearing black trousers and a black T-shirt. Upon seeing the officers, that person began walking further into Andrewge Watta. He was apprehended and searched by the officers, and during the search a small parcel suspected to contain heroin was found in his possession.

6. Thereafter, they proceeded to a jewelry shop named Letchchami, where the substance was weighed and sealed. They then went to the Grandpass Police Station and handed over the Appellant and the parcel before returning to the Harbour Police Station. PW2 also testified in support of the evidence given by PW1.

7. A careful examination of the testimonies of PW1 and PW2 reveals several *inter se* contradictions. According to PW1, only one officer, namely PC 68921 Priyadarshana, was

in uniform, while the others were in civilian attire. In contradiction to this, PW2 stated that all the officers were in civilian clothing. Unlike lay witnesses, police officers are permitted to testify with reference to their field notes. Therefore, even minor inconsistencies in their evidence have the potential to undermine their credibility. Courts have repeatedly emphasized the importance of maintaining accurate and contemporaneous notes relating to official duties; regrettably, only a few officers adhere to this requirement.

8. In the present case, it was elicited during cross-examination that the "out entry" recorded by PW1 stated 8.00 a.m., whereas he testified that they had left at 9.45 a.m. PW1 admitted that the out entry was incorrect. This discrepancy, concerning the very commencement of the raid, casts serious doubt on the reliability and credibility of his evidence.

9. Despite the presence of such glaring discrepancies in the evidence, the learned High Court Judge nevertheless arrived at an erroneous conclusion that the testimonies of both PW1 and PW2 were consistent with respect to the departure for the raid, the place, the timing, and the duration of the raid.

10. Although PW1 stated that he had searched the vehicle and the officers prior to setting off on the routine duty, no notes were made in that regard. PW1 in fact admitted that such a search constituted an important part of the raid.

11. The failure to record this essential procedural step is a serious lapse, as the pre-search of officers and the vehicle is a safeguard designed to eliminate the possibility of subsequent fabrication or planting of illicit substances.

12. Courts have repeatedly underscored the importance of documenting each stage of detection, particularly in narcotics cases where strict scrutiny is required due to the severe penalties involved. The omission to make contemporaneous notes not only reflects non-compliance with established procedure but also weakens the reliability of the prosecution's version.

13. Next, I shall consider the evidence of T.B. Dayarathne (PW2). According to his testimony, he was the officer who accompanied PW1 to Andrewge Watta and effected the arrest of the Appellant. It is noteworthy that PW2 had not made any notes regarding the important

steps taken during the raid. He had neither made the out-entry nor the in-entry. Although PW2 was in possession of a weapon and a pair of handcuffs, no notes were made in that regard. Similarly, PW2 had not made any note concerning the weighing of the substance allegedly recovered from the Appellant.

14. It is also significant to observe that, according to PW2, the Appellant's residence was located approximately 50–70 meters away from the place of arrest. Yet, they had not searched the house. This omission is quite unusual, as it is always possible that a drug trafficker would keep part of his contraband at his residence.

15. These infirmities in PW2's evidence certainly cast doubt on the alleged arrest of the Appellant. More importantly, PW2 himself admitted that most of the events about which he failed to maintain notes were of great importance. If that was so, he ought to have provided a reasonable explanation for his failure to record those matters.

16. The next ground of appeal, which is most critical to the sustainability of the conviction, concerns the manner in which the learned Trial Judge analyzed and evaluated the evidence presented by both parties, as well as his observations regarding the burden of proof placed on the defense.

17. It is discernible from the judgment that the learned High Court Judge first evaluated the evidence of the prosecution witnesses and concluded that such evidence was sufficient to establish the charge against the Appellant. Only thereafter did he proceed to evaluate the defense evidence. In my view, this approach is erroneous in law, particularly in light of the legal principles enunciated in ***James Silva v. Republic of Sri Lanka [1980] (2) Sri.L.R.167***

18. It is trite law that the duty of a trial Judge is to consider all the evidence placed before the Court, whether by the prosecution or by the defense, as a whole, and to arrive at his findings accordingly, rather than compartmentalizing the evidence as was done in the impugned judgment.

19. In the present case, it is evident that the trial Judge had reached a conclusion that the prosecution had established the charges against the Appellant even before considering the defense evidence. It is also noteworthy that the trial Judge made an erroneous observation

regarding the dock statement, as he effectively placed the burden on the appellant to prove his defense.

20. It was held in the case of ***Nandana Vs. Attorney-General 2008 (1) SLR 5l*** by Sisira de Abrew J that;

> *"Imposing a burden on the accused to prove his innocence is totally foreign to the accepted fundamental principles of our Criminal Law as to the presumption of evidence. "The mis-statements of law by the trial Judge would tantamount to a denial of a fundamental right of any accused as enshrined in Art 13(5) of the Constitution - a misdirection on the burden of proof is so fundamental in a criminal trial that it cannot be condoned and could necessarily vitiate the conviction."*

21. The appellant, throughout the trial, consistently maintained that he had been arrested at his home and not near the Buddha statue at Andrewge Watta as alleged by the prosecution. He reiterated this position in his dock statement as well. However, the learned trial Judge placed a burden on the Appellant to prove the truthfulness of his dock statement, observing that the Appellant could have called his parents to testify in support of his contention.

22. This amounts to a serious misdirection of the law. It is a grave error for a trial Judge to expect an accused to prove his dock statement, because in a criminal trial there is no burden on the Appellant to establish the dock statement affirmatively. If the dock statement is capable of creating a reasonable doubt in the prosecution case, that alone is sufficient for the defense to succeed.

23. The learned Deputy Solicitor General, in keeping with the highest traditions of the Attorney General's Department, candidly conceded the above error discernible in the judgment, which is fatal to the conviction.

24. The law pertaining to the evidentiary value of a dock statement, the proper manner of its evaluation, and its potential impact on the prosecution case has been succinctly articulated in several authoritative decisions.

25. In ***Kathubdeen vs Republic of Sri Lanka [1998] (3) Sri L.R.107,*** it was observed:

> *It is settled law that an unsworn statement must be treated as evidence. It has also been laid down that if the unsworn statement creates a reasonable doubt in the prosecution case or if it is believed, then the accused should be given the benefit of that doubt.*

26. In ***Gunasiri and two others vs. Republic of Sri Lanka [2009] 1 SRI.L.R 39*** it was held that:

> *In evaluating a dock statement, the trial Judge must consider the following principles: (1) If the dock statement is believed it must be acted upon. (2) If the dock statement creates a reasonable doubt in the prosecution case the defence must succeed.*

27. Therefore, the learned Trial Judge's conclusion regarding the dock statement, and in particular, the imposition of a burden on the Appellant to prove it, is wholly contrary to accepted legal principles. The burden of proving a criminal charge always rests on the prosecution, and the defense is never required to prove a negative. The defense is only required to create a reasonable doubt in the prosecution case. In the present case, the evidence adduced by the prosecution does not discharge the burden of proving the case beyond reasonable doubt. The dock statement made by the Appellant was rejected by the learned Trial Judge on an erroneous premise, in direct contravention of the established principles of law.

28. In ***Pantis v. The Attorney General - (1998) 2 Sri L.R.148***, it was held that *"The burden of proof is always on the prosecution to prove its case beyond reasonable doubt and no such duty is cast on the accused and it is sufficient for the accused to give an explanation which satisfies courts or at least is sufficient to create a reasonable doubt as to the guilt".*

29. Thus, in the present case, the Appellant's dock statement has created a reasonable doubt, as he consistently maintained the same position during the cross-examination of PW1 and PW2. Therefore, it cannot, in any event, be regarded as an afterthought. Nevertheless, as stated earlier, the learned Trial Judge misdirected himself in evaluating the dock statement and further erred in concluding that the Appellant ought to have called witnesses to prove it.

30. The infirmities discernible in the evidence of PW1 and PW2, together with the learned Trial Judge's erroneous observations regarding the dock statement, would inevitably stand in the way of sustaining the conviction in the present case.

31. Upon the above analysis, I hereby set aside the conviction and sentence of the Appellant. Accordingly, the appeal is allowed.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree,

Judge of the Court of Appeal